

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OTTO BERK, *et al.*,

Plaintiffs,

v.

Case No. 2:10-CV-1082  
Judge Frost  
Magistrate Judge King

ERNIE MOORE, DIRECTOR, *et al.*,

Defendants.

ORDER

On May 16, 2011, the United States Magistrate Judge recommended that Defendants' motion to dismiss for misjoinder be denied and that Plaintiffs' motion for default judgment be denied. *Report and Recommendation*, Doc. No. 46. This matter is now before the Court on the objection filed by Plaintiffs Berk, Blair and Hall. *Motion for a De Novo Review*, Doc. No. 49. Defendants have not filed objections, although all parties were advised of their right to do so and of the consequences of their failure to file objections.

The Magistrate Judge recommended that Plaintiffs' motion for default judgment be denied, observing that the Court had stayed the date by which Defendants were to respond to the complaint, pending resolution of Defendants' motion to dismiss for misjoinder. *Report and Recommendation*, at 3 (citing *Order*, Doc. No. 37). In their objection, Plaintiffs appear to disagree with the Court's stay of response date, arguing that Defendants should have responded to the complaint and that their failure to do so, combined with the filing of

the motion to dismiss for misjoinder, worked to Plaintiffs' prejudice.

The decision of the Magistrate Judge to grant Defendants' request to stay their answer date was neither clearly erroneous nor contrary to law. See 28 U.S.C. §636(b); Fed. R. Civ. P. 72. Defendants' failure to respond to the complaint was therefore authorized by the Court. Under these circumstances, it cannot be said that Defendants were in default. Plaintiffs' motion for default judgment is without merit.

Plaintiffs' *Motion for a De Novo Review*, Doc. No. 49, is therefore **DENIED**. The *Report and Recommendation* is **ADOPTED and AFFIRMED**. Defendants' *Motion to Dismiss for Misjoinder*, Doc. No. 24, is **DENIED**. Plaintiffs' *Motion for Default Judgment*, Doc. No. 28, is **DENIED**.

/s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE